**Reply** **form**

Review of RTS 22 on transaction data reporting under Art. 26 and RTS 24 on order book data to be maintained under Art. 25 of MiFIR

Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **17 January 2025.**

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in this reply form.
* Please do not remove tags of the type <ESMA\_QUESTION\_CP3\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP3\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP3\_ABCD.

* Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the headings ‘Legal notice’ and heading ‘[Data protection](https://www.esma.europa.eu/about-esma/data-protection)’..

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | BVI Bundesverband Investment und Asset Management e.V. |
| Activity | Investment Services |
| Are you representing an association? |  |
| Country/Region | Germany |

# Questions

1. Are any other adjustments needed to enable comprehensive and accurate reporting of transactions which will enter into scope of the revised Article 26(2)?

<ESMA\_QUESTION\_CP3\_01>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_01>

1. Does the existing divergence in the implementation of the MRMTL concept under Art. 4 and Art. 26 of MiFIR results in any practical challenges for the market participants? If so, please explain the nature of these challenges and provide examples.

<ESMA\_QUESTION\_CP3\_02>

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<ESMA\_QUESTION\_CP3\_02>

1. To what extent the rules applied for the determination of the RCA and RCA\_MIC are relevant for your operations? Do you agree with the potential alignment of the RCA rules with the RCA\_MIC rules for equities? Please provide details in your answer.

<ESMA\_QUESTION\_CP3\_03>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_03>

1. Do you agree with the proposed RCA determination rule for emission allowances and CIUs other than ETFs? Please provide details in your answer.

<ESMA\_QUESTION\_CP3\_04>

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<ESMA\_QUESTION\_CP3\_04>

1. Do you agree with the proposed RCA determination rule for equities for which no sufficient data is available to calculate the turnover? Please provide details in your answer.

<ESMA\_QUESTION\_CP3\_05>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_05>

1. Do you agree with the proposed RCA determination rules for the derivative contracts falling under Article 8a(2) of MiFIR? Please provide details in your answer.

<ESMA\_QUESTION\_CP3\_06>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_06>

1. Do you agree with the proposed amendments to RCA determination rules for index derivatives and depositary receipts?

<ESMA\_QUESTION\_CP3\_07>

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<ESMA\_QUESTION\_CP3\_07>

1. Do you have any further comment or suggestion in relation to the inclusion of a new field to capture the effective date in transaction reports?

<ESMA\_QUESTION\_CP3\_08>

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<ESMA\_QUESTION\_CP3\_08>

1. Do you agree that the concept of effective date applies also to transactions in shares? If yes, should the intended settlement date be considered as the effective date? Please provide details in your answer.

<ESMA\_QUESTION\_CP3\_09>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_09>

1. Do you agree with the inclusion of this new field according to the analysed scenario? Please specify if you see additional cases to take into consideration in the definition of this new field.

<ESMA\_QUESTION\_CP3\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_10>

1. Do you agree with the assessment that the TVTIC reporting requirement applies to all type of on venue executed transactions (e.g., negotiated trades)?

<ESMA\_QUESTION\_CP3\_11>

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<ESMA\_QUESTION\_CP3\_11>

1. Do you have views on how to improve the consistency of the reporting of TVTICs? Please provide your view on the proposal of making mandatory the reporting of such information in validation rules when the MIC code is provided.

<ESMA\_QUESTION\_CP3\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_12>

1. Do you have views on how to improve the consistency of the TVTIC ( non-EEA TV TIC) generation process for transactions executed in non- EAA venue? Please provide your view on the proposed syntax methodology based on the already reported fields or suggest alternatives.

<ESMA\_QUESTION\_CP3\_13>

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<ESMA\_QUESTION\_CP3\_13>

1. Do you agree with the proposal of identifying the non-EEA TV as the primary entity responsible for the creation of the non-EEA TV TIC code and for disseminating it?

<ESMA\_QUESTION\_CP3\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_14>

1. Do you have any further comment or suggestion in relation to the definition of a new transaction identification code (TIC) for off venue transactions? Please provide your view for the proposed syntax methodology for creating the TIC based on the already reported fields, or suggest alternatives.

<ESMA\_QUESTION\_CP3\_15>

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<ESMA\_QUESTION\_CP3\_15>

1. Do you agree with the proposal of identifying the “market facing” firm acting as the seller as the primary entity responsible for the creation of the TIC code of off–venue transactions and for disseminating it to the other “market facing” firm acting as the buyer?

<ESMA\_QUESTION\_CP3\_16>

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<ESMA\_QUESTION\_CP3\_16>

1. Do you have any further comment or suggestion in relation to the inclusion of a new field (INTC identifier) to capture in detail the aggregate orders? Please provide views on the proposed methodology for defining a common syntax or suggest valuable alternatives.

<ESMA\_QUESTION\_CP3\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_17>

1. Do you agree that the executing investment firm should be responsible for generating consistently the INTC identifier?

<ESMA\_QUESTION\_CP3\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_18>

1. Do you agree with the proposal of how to report such additional field to identify and link chains in transaction reports? Please provide views on the key information to be considered for defining a common methodology for the syntax. Otherwise, please suggest alternatives for defining it and improve the linking process among chains.

<ESMA\_QUESTION\_CP3\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_19>

1. Do you agree with the proposal of identifying the entity executing transaction as the primary entity responsible for the creation of such code and for disseminating it?

<ESMA\_QUESTION\_CP3\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_20>

1. Do you agree with the proposed reference to Art. 3(3) of Benchmark Regulation to define the relevant categories of indices?

<ESMA\_QUESTION\_CP3\_21>

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<ESMA\_QUESTION\_CP3\_21>

1. Do you see a need to specify the ‘date by which the transaction data are to be reported’ different from the date of application of the relevant RTS 22 or have other comments with regards to the proposed timeline? If so, please specify.

<ESMA\_QUESTION\_CP3\_22>

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<ESMA\_QUESTION\_CP3\_22>

1. Are there any other international developments or standards agreed at Union or international level that should be considered for the purpose of the development of the RTS on transaction reporting?

<ESMA\_QUESTION\_CP3\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_23>

1. Do you agree with the proposed alignment of fields with EMIR/SFTR requirements as presented in the table above? Are there any other fields that should be aligned?

<ESMA\_QUESTION\_CP3\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_24>

1. Do you agree with the proposed approach for the alignment of reporting of the information related to direction of the transaction?

<ESMA\_QUESTION\_CP3\_25>

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<ESMA\_QUESTION\_CP3\_25>

1. Do you agree with the proposed approach for the alignment of reporting of the information related to price?

<ESMA\_QUESTION\_CP3\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_26>

1. Do you agree with the proposed alignment of the concept of complex trades with EMIR?

<ESMA\_QUESTION\_CP3\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_27>

1. Do you agree with adding the field ‘Package transaction price’ to align the reporting under MiFIR with EMIR Refit and CDE Technical Guidance?

<ESMA\_QUESTION\_CP3\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_28>

1. Do you agree with the proposed additional fields to allow for the reporting of the ISO 24165 Digital Token Identifier for DLT financial instruments and underlyings?

<ESMA\_QUESTION\_CP3\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_29>

1. Do you agree with the proposed amendments to Art.4 to extend the transmission of order agreement also to cases of acting on own account? Please detail your answer.

<ESMA\_QUESTION\_CP3\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_30>

1. Do you agree with the proposed amendments to Art.7 to include specific cases of portfolio and fund managers? Please detail your answer.

<ESMA\_QUESTION\_CP3\_31>

We support the ESMA initiative to review the transaction and reference reporting obligation with respect to Article 26 MiFIR. While our members are not impacted by the proposed changes—given that it is more common for our member firms to operate under AIFMD and UCITS licenses, exempting them from transaction reporting under RTS 22—we will focus our comments on the possibility of extending the requirements of Article 26 to AIFMs and UCITS Management Companies, as mandated under Article 52(14)(b) of the MiFIR review.

We strongly reiterate our position dated back in November 2020 that we expect significant and complex challenges for UCITS/AIF managers to provide MiFIR transaction reports in accordance with Article 26 MiFIR to the NCAs. UCITS/AIF managers are today not in the scope of Article 26 MiFIR transaction reporting and have therefore not built up any technical capabilities to manage and report transactions to the NCAs.

Also, transactions in MiFID financial instruments executed between UCITS/AIF managers and investment firms are already reported today to the NCAs. According to Article 26 para 5 of MiFIR, the operator of a trading venue shall report details of transactions in financial instruments traded on its platform which are executed through its system by a firm (e.g. UCITS/AIF managers) which is not subject to the MiFIR reporting obligation. Sell-Side firms are already required today to also report transactions to the NCAs executed with their Buy-Side clients. This includes also transactions executed off venue. In this context we strongly reiterate our position that investment funds (UCITS/AIFs) are among the most strictly regulated and transparent financial products. Fund management companies (UCITS/AIF) report data for each fund or share class to their respective NCAs at regular intervals.

There are regulatory fund reports (UCITS, AIFM and reporting to the National Central Bank), transaction reportings (EMIR, SFTR, as well as reports to institutional investors (CRR, Solvency II). Additionally, there are numerous special reports and ad hoc queries by regulators on various risks and reward as well as other economic factors relating to funds.

As mentioned above, the extension of the reporting obligation will enhance the reporting burden and the complexity for the fund industry. This approach is not in line with the long-term supervisory reporting vision initiated by the EU Commission for their European strategy for data (EDS) and the Digital Finance Strategy (DFS). The EU Commission overall objective is to have a reporting environment that delivers accurate, comparable, and timely data to supervisory authorities at EU and national level, while at the same time minimising the reporting costs and burden for supervised entities (e.g. UCITS/AIF managers) and supervisors. We strongly encourage ESMA to take into consideration the long-term supervisory reporting vision of the EU Commission and also the EU principle of proportionality when ESMA clarifies with the EU Commission the extension.

**In sum, we do not see the requirement to expand the scope of the MiFIR reporting obligation to UCITS/AIF managers. In that respect we strongly refer to our position on the ESMA consultation on the MiFIR review report on the obligations to report transactions and reference data in 2020 (please see ESMA74-362-1013**, [esma74-362-1013\_final\_report\_mifir\_review\_-\_data\_reporting.pdf](https://www.esma.europa.eu/sites/default/files/library/esma74-362-1013_final_report_mifir_review_-_data_reporting.pdf).

We understand that ESMA would like to obtain more details of the decision-maker. We believe that ESMA and the NCAs would benefit most if two additional reporting fields are introduced in the existing MiFIR reporting instead of mandating UCITS/AIF managers to report under Article 26 MiFIR (new data fields “End of Chain” and “Decision Maker of Non-Investment Firm”). Such an approach could deliver the additional data requested by ESMA/NCAs without increasing the reporting burden for the UCITS/AIF managers. We refer to our position dated on 20 November 2020. Please see our [attachment](https://www.bvi.de/fileadmin/user_upload/201120_BVI_position_ESMA_cons_Art-26_final.pdf).

<ESMA\_QUESTION\_CP3\_31>

1. Do you have any comments on the proposed approach to updating the ‘Instrument details’ section in the Annex to the RTS 22? Please flag any additional aspects that may need to be considered.

<ESMA\_QUESTION\_CP3\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_32>

1. Do you support inclusion of the new fields listed above? Please provide details in your answer.

<ESMA\_QUESTION\_CP3\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_33>

1. Do you agree with the amendments listed above for the existing fields? Please provide details in your answer.

<ESMA\_QUESTION\_CP3\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_34>

1. Do you support suppressing the reporting of the field listed above? Please provide details in your answer.

<ESMA\_QUESTION\_CP3\_35>

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<ESMA\_QUESTION\_CP3\_35>

1. Do you agree with the proposal of including in the list of exempted transactions under Art.2(5) the disposal or selling of financial instruments ordered by a court procedure or decided by insolvency administrator in the context of a liquidation / bankruptcy / insolvency procedure?

<ESMA\_QUESTION\_CP3\_36>

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<ESMA\_QUESTION\_CP3\_36>

1. Do you consider that the exemption in Art.2 (5) should take into consideration also other similar instances as described? Please elaborate your answer.

<ESMA\_QUESTION\_CP3\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_37>

1. Do you agree with the assessment and the proposal of expanding the perimeter of the exempted transactions to auctions in emission allowances?

<ESMA\_QUESTION\_CP3\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_38>

1. Do you agree with the proposal of narrowing the perimeter of the exempted novations to transactions having clearing purposes?

<ESMA\_QUESTION\_CP3\_39>

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<ESMA\_QUESTION\_CP3\_39>

1. Please provide your views on the format for reporting and any challenges you foresee with the use of JSON format compared to XML. Please provide estimates of the costs, timelines of implementation and benefits (short and long term) related to potential transition to JSON.

<ESMA\_QUESTION\_CP3\_40>

There is a risk that the introduction of a new format to the market, such as JSON, could bring additional costs and complexity.

The transitioning from XML to JSON could present significant challenges for the industry, particularly following the recent and demanding shift from CSV to XML. While the move to XML has been beneficial, introducing an additional format change in such a short timeframe will impose unnecessary operational and financial burdens on the reporting entities.

We are generally not in favour to support the JSON format. Any perceived benefits should therefore be carefully weighed against the value of maintaining XML, a widely adopted and proven format that effectively supports reporting requirements. Before considering such a transition, clear and demonstrable advantages for the industry must be outlined, including a thorough cost-benefit analysis and a realistic implementation timeline

Mandating a single reporting format in the RTS may not be the most effective approach. As technology evolves, new reporting solutions or alternative formats to both XML and JSON could emerge. A more appropriate solution would be for ESMA to focus on ensuring consistent data content and structure while allowing sufficient flexibility for the reporting entities to adopt different reporting formats

<ESMA\_QUESTION\_CP3\_40>

1. Should the use of transaction data to perform the calculations be feasible, what would be the costs and the benefits of using this data and discontinuing the specific reporting flows (FITRS and / or DVCAP), including in relation to the change and run costs of reporting systems, data quality assurance and other relevant aspects?

<ESMA\_QUESTION\_CP3\_41>

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<ESMA\_QUESTION\_CP3\_41>

1. Do you have any comments on the methodological approach outlined above?

<ESMA\_QUESTION\_CP3\_42>

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<ESMA\_QUESTION\_CP3\_42>

1. Do you have other comments on this potential change, e.g. on specific issues, challenges or alternatives that could be considered by ESMA in its assessment?

<ESMA\_QUESTION\_CP3\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_43>

1. Do you agree with the proposal of adopting JSON as standard and format of order book data keeping and transmission? Please justify your answer.

<ESMA\_QUESTION\_CP3\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_44>

1. Please provide your views on the format of reporting and any challenges you foresee with the use of JSON format compared to XML. Please provide estimates of the costs, timelines and benefits (short and long term) related to the potential implementation of JSON syntax.

<ESMA\_QUESTION\_CP3\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_45>

1. Do you have any comments on the proposed approach to updating the field list in the Annex to align with the proposed RTS 22 fields? Please flag any additional aspects that may need to be considered.

<ESMA\_QUESTION\_CP3\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_46>

1. Do you support inclusion of the new fields listed above?

<ESMA\_QUESTION\_CP3\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_47>

1. Do you agree with the amendments listed above for the existing fields?

<ESMA\_QUESTION\_CP3\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP3\_48>

1. Do you have further suggestions to improve or streamline the other fields in RTS 24?

<ESMA\_QUESTION\_CP3\_49>

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<ESMA\_QUESTION\_CP3\_49>